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UNISOURCE WORLDWIDE, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA—SAN FRANCISCO DIVISION

JOHN CREIGHTON, JAMES FITZPATRICK
AND WILLIAM GALVIN, on behalf of
themselves and others similarly situated,

Plaintiffs,

vs.

UNISOURCE WORLDWIDE, INC., and
DOES 1 through 50, inclusive,

Defendants.

CASE NO. CV 06-03860 the

**STIPULATION FOR CONTINUANCE OF
CERTAIN INITIAL DATES; ~~PROPOSED~~
ORDER**

**[Filed concurrently herewith: Declaration of
Rebecca Gose Lynch in support of
Stipulation for Continuance of Certain
Initial Dates]**

(Alameda Superior Court Case No.
RG06270215)
Courtroom: 12
The Honorable Thelton E. Henderson

1 The parties, through their respective counsel and by this Joint Stipulation, hereby
2 request the Court to continue for a reasonable period the current dates establishing various
3 deadlines.

4 **PROCEDURAL BACKGROUND**

5 On May 19, 2006, Plaintiffs filed the instant action in the California Superior
6 Court for Alameda County. They served their Complaint on defendant Unisource Worldwide,
7 Inc. ("Unisource") on May 22, 2006. Unisource answered the Complaint on June 19, 2006, and
8 removed the action to this Court on June 20, 2006.

9 **FACTUAL AND LEGAL BASES FOR CLAIMS AND DEFENSES**

10 **AND ISSUES IN DISPUTE**

11 Plaintiffs were, or currently are, employed as sales representatives by Unisource.
12 They assert claims for alleged violations of California labor law on behalf of themselves and all
13 persons similarly situated. In their Complaint, Plaintiffs make four principal allegations: (a) that
14 Unisource violated California labor law by not reimbursing sales employees for necessary
15 business expenses; (b) that Unisource illegally made deductions from employees' earned
16 commissions; (c) that Unisource unfairly calculated employees' earned commissions; and (d) that
17 Unisource improperly sought a wavier and release from employees for the non-payment of wages
18 and business expenses. Based on these principal allegations, Plaintiffs allege seven causes of
19 action against Unisource: (1) breach of contract, (2) breach of implied covenant of good faith and
20 fair dealing, (3) nonpayment of wages and improper deductions, (4) violation of Business &
21 Professions Code §§ 17200, et seq., (5) violation of Labor Code § 2802, (6) violation of Labor
22 Code §§ 98.6 and 1102.5, and (7) fraud.

23 Although this lawsuit is in its early stages and discovery is still ongoing,
24 Unisource disputes all of Plaintiffs' principal allegations and it disputes that class treatment is
25 appropriate in this action.

26 **ANTICIPATED MOTIONS AND CLASS CERTIFICATION DETERMINATION**

27 Plaintiffs' Complaint has been filed as a class action. At this stage in the
28 proceedings, the parties anticipate that the following motions will be filed in this action: Motion

1 for Class Certification and Motion for Summary Judgment or, in the Alternative, for Partial
2 Summary Judgment. Other motions or filings may be necessary as this litigation progresses.

3 The parties have already engaged in extensive discovery. On January 17, 2007,
4 the Court approved the parties' joint stipulation to continue initially scheduled dates by
5 approximately two months in order to accommodate the need for further discovery and to
6 accommodate a mediation date on April 12, 2007.¹ Pursuant to that continuance, the fact
7 discovery cut-off for the class certification phase of the case was set for May 15, 2007, with a
8 further Case Management Conference on May 7, 2007. The date for filing a motion for class
9 certification is set for June 15, 2007, with the opposition due on July 15 and the Reply due on
10 August 1. The hearing on the class certification motion is currently set for August 20, 2007.

11 The parties have engaged in a full day of private mediation with one of San
12 Francisco's most respected employment mediators, Mark Rudy. That took place on April 12,
13 2007. Defendants brought representatives from their home office in Atlanta to participate in the
14 mediation. All three named plaintiffs also participated. The mediation was not completed and the
15 parties needed to conduct further review of various issues and documentation. Consequently a
16 second day of mediation with Mr. Rudy has recently been set. The earliest date that Mr. Rudy
17 could resume this mediation and hopefully reach a satisfactory resolution is May 25, 2007. The
18 parties have set aside a full day for this mediation.

19 This upcoming second day of mediation necessitates a continuance in the currently
20 set dates. Both parties are taking the mediation very seriously. The parties therefore respectfully
21 request that the Court accept the proposed order below, which establishes a revised schedule to
22 accommodate these concerns by moving the relevant dates back by approximately ninety days as
23 follows: the deadline for mediation would be moved to May 25, 2007, the deadline for fact
24 discovery with regard to class certification issues would be moved to August 24, 2007, the filing
25

26 ¹ The Court's initial schedule provided that the class certification motion would be filed no later than April
27 15, 2007, the opposition due by May 15, 2007, and any reply due by June 1, 2007. The originally
28 scheduled hearing date for the anticipated Motion for Class Certification was June 18, 2007. The Court
had also set March 5, 2007 as the date for a further case management conference. As explained above, on
January 17, 2007, the Court approved a stipulation to continue these dates by approximately two months.

1 deadline for any motion for class certification would be moved to September 14, 2007 (with the
2 opposition due by October 15, 2007 and the reply due by November 2, 2007), the hearing on any
3 motion for class certification would be continued to November 19, 2007, and the date for further
4 case management conference would be continued to August 6, 2007 at 1:30 p.m.

5 Respectfully submitted:

6
7 DATED: April 30, 2007

FINE, BOGGS & PERKINS LLP

8 By: Ned Fine RGL
9 NED A. FINE

10 Attorneys for Plaintiffs
11 JOHN CREIGHTON, JAMES FITZPATRICK, and
WILLIAM GALVIN

12 DATED: April 30, 2007

MUNGER, TOLLES & OLSON LLP

13
14 By: Rebecca Lynch
15 REBECCA G. LYNCH

16 Attorneys for Defendant
17 UNISOURCE WORLDWIDE, INC.
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~~PROPOSED~~ REVISED CASE MANAGEMENT ORDER

The Court's previous Case Management Order is revised as follows:

(1) The parties shall participate in private mediation on or before May 25, 2007;

(2) Discovery in this matter shall be bifurcated, with the first phase of discovery limited to class certification issues. Fact discovery with regard to the merits of the individual claims or class claims will proceed after the parties have briefed the anticipated Motion for Class Certification and the Court has determined whether class certification is appropriate here. While all discovery conducted during the first phase of discovery will be directed at class certification issues only, the parties will not limit the scope of their responses to otherwise valid discovery requests during the first phase of discovery based on the bifurcation of issues in discovery;

(3) Fact discovery with regard to class certification issues shall be completed by August 24, 2007;

(4) Any Motion for Class Certification will be filed by September 14, 2007, with the opposition due by October 15, 2007, and any reply due by November 2, 2007. The Motion for Class Certification shall be heard on November 19, 2007.

(5) The date for further case management conference will be continued to August 6, 2007 at 1:30 p.m.

IT IS SO ORDERED.

Dated: 05/01/07

The Honorable Thelton E. Henderson

